

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., MOTOROLA
MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1823-JLR

DECLARATION OF K. MCNEILL
TAYLOR, JR IN SUPPORT OF
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

**NOTED ON MOTION CALENDAR:
May 7, 2012**

REDACTED

DECLARATION OF K. MCNEILL TAYLOR, JR IN SUPPORT
OF DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT
CASE NO. C10-1823-JLR

SUMMIT LAW GROUP PLLC
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1 I, K. MCNEILL TAYLOR, JR., declare as follows:

2 1. I am Corporate Vice President and Chief Intellectual Property Counsel of Motorola
3 Mobility, Inc. ("Motorola") and am a member in good standing of the bars of New York, Texas
4 (inactive), Illinois, and North Carolina.

5 2. I submit this declaration in support of Defendants' Motion for Partial Summary
6 Judgment, submitted concurrently herewith. The statements in this declaration are based on and
7 summarize the deposition testimony that I gave under oath in response to questions from
8 Microsoft's counsel on March 20, 2012.

9 **Background**

10 3. I have worked for Motorola, Inc. or its related companies since 2002. When I
11 joined the legal department of Motorola, Inc. in 2002, I had responsibility for cellular patent
12 licensing for the infrastructure (e.g., base stations and equipment for cell towers) and mobile
13 device businesses. In 2007, I became Vice President and General Counsel for Symbol
14 Technologies, Inc., a subsidiary of Motorola, Inc. In April 2009, I became Vice President and
15 Lead IP Counsel for the Broadband Mobility Solutions businesses of Motorola, Inc., with
16 responsibility for the intellectual property legal matters of all the businesses of Motorola, Inc.
17 other than Mobile Devices. After Motorola, Inc. announced that it would separate into two
18 companies in early 2010, I transitioned to the Mobile Device and Home businesses and became
19 responsible for all intellectual property legal matters of the businesses that now comprise Motorola
20 Mobility, Inc. In May 2011, I also assumed responsibility for all general litigation matters of
21 Motorola Mobility, Inc.

22 **Motorola's Historical Licensing Program and Policies**

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DECLARATION OF K. MCNEILL TAYLOR, JR IN SUPPORT
OF DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT - 2
CASE NO. C10-1823-JLR

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1 7. Because Motorola typically does not have sufficient information about its potential
2 licensee to know in advance how it will receive the 2.25% in overall value for its standard-
3 essential patents, Motorola opens negotiations with its standard offer rate – 2.25% of the net
4 selling price of licensed products, subject to a grant-back of rights under the licensee’s essential
5 patents. This has been Motorola’s standard offer rate for essential patents for as long as I have
6 been at Motorola. Based on our licensing history, the terms of our negotiated licenses, and our
7 experience in licensing negotiations, Motorola has concluded that this standard offer rate is
8 consistent with its RAND assurances.

9 8. Motorola’s expectation is that the parties will use the standard offer rate as a
10 starting point for good-faith negotiations. These good faith negotiations will typically involve an
11 exchange of confidential and proprietary information (such as that described above in paragraph 6)
12 that will allow Motorola and a prospective licensee to negotiate reasonable terms and conditions
13 appropriate for the unique circumstances of a particular licensing situation. It is only through the
14 good-faith-negotiation process that the parties can fully understand what is and is not important to
15 the other party.

16 9. The good-faith negotiation conducted by Motorola and the licensee involves
17 balancing the strength of each party’s patent portfolio and its potential exposure. At a very high
18 level, the parties to a negotiation will, for lack of a better explanation, multiply the value of Party
19 A’s portfolio by Party B’s potential exposure and compare this result to the value of Party B’s
20 portfolio multiplied by Party A’s potential exposure. This type of balancing calculation drives the
21 negotiation of terms in the ultimate patent cross-license.

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DECLARATION OF K. MCNEILL TAYLOR, JR IN SUPPORT
OF DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT - 4
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Motorola October 21 and 29 Letters Sent In Response To Microsoft's Request

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The first was sent on October 21, 2010, and offered a license to Microsoft for Motorola's 802.11 patent portfolio; the second was sent on October 29, 2010, and offered a license to Motorola's H.264 portfolio. Consistent with Motorola's licensing program, these letters included Motorola's standard offer rate for its 802.11 and H.264 essential patent portfolios.

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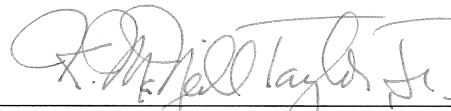
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Microsoft Files It Breach of Contract (RAND) Action

17. Microsoft did not respond to the two October letters and, instead, filed this breach of contract action.

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8 I declare under penalty of perjury of the laws of the United States and the State of
9 Washington that the foregoing is true and correct.

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11 DATED this 30th day of March, 2012.

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14 K. McNeill Taylor, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 30th day of March, 2012.

/s/ Marcia A. Ripley
Marcia A. Ripley